

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VASUDEVAN SOFTWARE, INC.,

Plaintiff,

v.

MICROSTRATEGY INC.,

Defendant.

Case No.: 11-cv-06637-RS-PSG

**ORDER DENYING MOTIONS TO
SEAL**

(Re: Docket Nos. 171, 180, 186)

Vasudevan Software, Inc. (“VSI”) and Microstrategy, Inc. (“Microstrategy”) move to seal documents and exhibits offered in support of or in response to Microstrategy’s recent motion to compel.¹ Having reviewed the requests and the supporting declarations, the court DENIES the requests.

Sealing motions for documents submitted with nondispositive discovery motions are subject to the good cause standard of Fed. R. Civ. P. 26(b).² Even under the lower good cause standard, the parties must make a “particularized showing”³ that “specific prejudice or harm will result,”⁴ and they must “narrowly tailor” their requests to information for which they have made

¹ See Docket No. 170.

² *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

³ *Id.*

⁴ Fed. R. Civ. P. 26(c).

1 that showing.⁵ “[B]road allegations of harm, unsubstantiated by specific examples or articulated
2 reasoning” will not suffice.⁶ A protective order sealing the documents during discovery may
3 reflect the court’s previous determination that good cause exists to keep the documents sealed,⁷ but
4 a blanket protective order that allows the parties to designate confidential documents does not
5 provide sufficient judicial scrutiny to determine whether each particular document should remain
6 sealed.⁸

7
8 All of the documents to be sealed are purportedly VSI’s confidential information. In
9 support of Microstrategy’s requests on its behalf and its own request, VSI offers declarations that
10 state that the documents to be sealed “reflect VSi’s protected trade secrets and information that is
11 not publicly-available or widely known and which, if made public, could cause competitive harm
12 to” VSI.⁹ This statement alone does not suffice to demonstrate the specific and particularized harm
13 that would result if the information contained within the redacted and sealed exhibits were
14 disclosed.

15
16 The court nevertheless has reviewed the documents to ensure that they do not contain any
17 obviously proprietary or personal information and finds much of their contents to be inappropriate
18 for sealing. For example, one exhibit includes publicly available patent information¹⁰ and another
19 includes a published article about the National Security Agency.¹¹ For other exhibits, VSI has not
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21 ⁵ Civil L.R. 79-5

22 ⁶ *Kamakana*, 447 F.3d at 1178.

23 ⁷ *See id.* at 1179-80.

24 ⁸ *See* Civil L.R. 79-5(a).

25 ⁹ *See* Docket Nos. 178, 180 Ex. 1.

26 ¹⁰ *See* Docket No. 170 Ex. 5.

27 ¹¹ *See id.* Ex. 6.
28

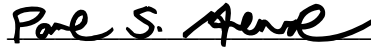
provided sufficient explanation for why the information would be harmful if disclosed.

Information such as Frank Schwartz's employment with VSI and the disputes following the end of his employment,¹² VSI's intention to pursue litigation against the National Security Agency,¹³ or VSI's preservation actions or email backup capabilities¹⁴ do not appear to warrant sealing. VSI likewise has failed to explain the injury that would result from disclosure of an exchange of emails between Frank Schwarz and Mark and Helen Vasudevan.¹⁵

Because VSI has not provided a particularized showing of the harm that would result from public filing of these documents, the requests to seal the exhibits and redact the briefs are DENIED. The parties shall file unredacted copies of the documents within fourteen days.

IT IS SO ORDERED.

Dated: April 4, 2013


PAUL S. GREWAL
United States Magistrate Judge

¹² See Docket No. 170 Ex. 9; Docket No. 179 Exs. 2, 3.

¹³ See *id.* Exs. 3, 4.

¹⁴ See *id.* Exs. 2, 12; Docket No. 179 Exs. 3, 11.

¹⁵ See Docket No. 179 Exs. 4, 5, 6, 7.